

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Section 68.4(a) of the Commission's Rules) WT Docket No. 01-309
Governing Hearing Aid-Compatible)
Telephones)
)
Litchfield County Cellular, Inc. dba Ramcell of)
Kentucky LLC Petition for Waiver of Sections)
20.19(c)(2) of the Commission's Rules)

To: The Commission

**LITCHFIELD COUNTY CELLULAR, INC. DBA RAMCELL OF KENTUCKY LLC
PETITION FOR WAIVER OF SECTION 20.19(c)(2) OF THE COMMISSION'S RULES**

Pursuant to Section Sections 1.3 and 1.925 of the Commission's Rules, Litchfield County Cellular, Inc. dba Ramcell of Kentucky LLC ("Litchfield") hereby requests a waiver of Section 20.19(c)(2)(i)(A) and, to the extent necessary, Section 20.19(c)(2)(i)(B) of the Commission's rules until such time as Litchfield sells its Part 22 cellular Time Division Multiple Access ("TDMA") system in the Kentucky 11-Clay RSA market. The waiver is necessary because (1) no U3-rated TDMA handsets are or will be commercially available from manufacturers for Litchfield to sell to its customers, and (2) Litchfield has determined that it is not viable from a business standpoint to overbuild its current TDMA air interface system to employ an alternative air interface protocol and, thus, cannot avail itself of the transition period for TDMA systems under Section 20.19(c)(2)(i)(B). In order to facilitate the sale of its TDMA system and to account for Commission Title III application processes, Litchfield requests a waiver of Section 20.19(c)(2) of the rules through February 28, 2006, by which time Litchfield expects to have sold its TDMA system.

I. BACKGROUND

Litchfield is a small “Tier III” rural wireless carrier that operating a cellular TDMA network to provide wireless service in sparsely populated, rural counties in Kentucky. Litchfield is committed to meeting the accessibility needs of its customers and, indeed, its affiliates offering service via CDMA technology are offering HAC-compliant handsets.

As the Commission is aware, however, no U3-rated HAC TDMA handsets are commercially available from handset manufacturers or distributors.¹ Litchfield initially planned to implement a CDMA overlay in its markets and transition those customers to CDMA technology. Thus, Litchfield would have been able to avail itself of the full transition period through September 18, 2006 afforded to a carrier who “plans to overbuild (*i.e.* replace) its network to alternative air interface(s).”² Litchfield has since determined, however, that due to the costs of an overlay, the rural nature of the market, and financial setbacks, such a measure is not economically viable from a business standpoint and, thus, has initiated steps toward placing the markets for sale, including the listing of its system with a broker.³

As Litchfield no longer plans to implement a CDMA overlay, Litchfield is thus compelled to seek a waiver of the September 16, 2005 deadline and, to the extent necessary, Section 20.19(c)(2)(i)(B). Litchfield has narrowly tailored its waiver request to provide the minimum time necessary to enable Litchfield to secure a purchaser for its TDMA system and

¹ *Section 68.4(a) of the Commission’s Rules Governing Hearing-Aid Compatible Telephones*, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 05-122, at ¶ 48-50 (rel. June 21, 2005) (“2005 Order on Reconsideration”).

² 47 C.F.R. § 20.18(c)(2)(i)(B).

³ Litchfield recently apprised the Commission of this development. *See* Litchfield County Cellular, Inc. dba Ramcell of Kentucky LLC, Interim Report in CC Docket No. 94-102, filed September 1, 2005, at 3-4.

consummate the transaction. As discussed below, Litchfield requests a waiver of the September 16, 2005 compliance deadline through February 28, 2006 to facilitate this transaction.

II. WAIVER OF THE COMMISSION'S RULES IS CONSISTENT WITH THE PUBLIC INTEREST

In the *Order on Reconsideration*, the Commission stated that it will “entertain individual requests for relief...on a case-by-case basis under [the Commission’s] general waiver standard.”⁴ In accordance with that standard, it would be unduly burdensome and contrary to the public interest to strictly enforce Section 20.19(c)(2) of the rules against Litchfield.⁵ Section 20.19(c)(2)(i)(A) of the Commission’s rules requires that each provider of public mobile radio services must “[i]nclude in its handset offerings at least two handset models per air interface” by September 16, 2005 that meet the U3 rating of the ANSI C63.19-2001 technical standard.⁶ As noted, currently there are no TDMA handsets commercially available that meet the U3 rating. Moreover, manufacturers have largely discontinued production of TDMA handsets and carriers are transitioning their systems to more advanced technologies. As the Commission has recognized, “small wireless carriers are often unable to influence vendor product development.”⁷

⁴ 2005 *Order on Reconsideration*. at ¶ 50.

⁵ See 47 C.F.R. §§ 1.3 (waiver appropriate “for good cause shown”) and 1.925(b)(3)(ii) (waiver appropriate where unique or unusual factual circumstances render application of the rule “inequitable, unduly burdensome or contrary to the public interest”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate where “particular facts would make strict compliance inconsistent with the public interest”).

⁶ See 47 C.F.R. §§ 20.19(b)(1), (c)(2)(i).

⁷ 2005 *Order on Reconsideration* at ¶ 49; see also, *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order to Stay*, 17 FCC Rcd 14841, 14844 (2002) (“we conclude that handset vendors...give priority to the larger, nationwide carriers.”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order*, 18 FCC Rcd 21838, 21847 (2003) (“Because the nationwide carriers have large subscriber bases, they are likely to place the largest orders for the necessary equipment, making them the priority customers for vendors of the necessary

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As a small Tier III carrier, Litchfield does not obtain its handsets directly from manufacturers. Rather, it must rely on relationships with third-party wholesalers for handsets. Because of its comparatively small number of subscribers and limited revenue, Litchfield is no position to influence manufacturers to produce and market U3 compliant TDMA handsets.

Because there are no U3-rated phones available for Litchfield to offer to its customers, compliance with the Commission's rules is infeasible.⁸ Moreover, in a number of instances the Commission has waived its rules to accommodate the sale of systems from one carrier to another.⁹ Given Litchfield's intention to sell its TDMA system as expeditiously as possible, it would be unduly burdensome and contrary to the public interest to strictly enforce the rule here.¹⁰ As the Commission has acknowledged, "a technology overbuild represents a

equipment and technology."); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order*, 20 FCC Rcd 7709, 7740 (2005).

⁸ The Commission has frequently determined that waiver is appropriate when carriers are dependent on the availability of products from their vendors. *See, e.g., Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, 13 FCC Rcd. 9564, 9568 ¶ 18, 9570 ¶ 25 (1998); *Roosevelt County Rural Tel. Cooperative, Inc.*, 13 FCC Rcd. 22, ¶¶ 28-36 (1997); *Policies and Rules Concerning Operator Service Providers*, 5 FCC Rcd. 4630, ¶ 22 (1990); *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 – Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd. 1981, ¶¶ 76-77 (1994).

⁹ *See, e.g., Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, Order*, 19 FCC Rcd 10521 (2004) (granting waiver of digital TTY requirement in context of transaction); *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Dobson Cellular Systems, Inc. Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, Order*, 19 FCC Rcd 10518 (2004) (granting waiver of LNP rules in context of transaction).

¹⁰ Litchfield will coordinate with Commission staff concerning any additional HAC-related submissions necessary in conjunction with transfer of control or assignment applications filed in association with the sale of Litchfield's TDMA system.

considerable undertaking and requires a significant investment.”¹¹ Litchfield simply does not have the resources to overlay its network in accordance with Section 20.19(c)(1)(i)(B), or the technological wherewithal to offer two U3-rated TDMA handsets by September 16, 2005. As such, “good cause” exists here to justify a waiver of the September 16, 2005 deadline.

Litchfield requests that the Commission waive the September 16, 2005 deadline of Section 20.19(c)(2)(i)(A) and, to the extent necessary, Section 20.19(c)(2)(i)(B), through February 28, 2006, by which time Litchfield anticipates it will be able to sell its legacy TDMA system to a willing buyer. Litchfield will endeavor to sell its TDMA system expeditiously – thereby enabling the buyer to implement any necessary technology overlay well in advance of the September 18, 2006 date of the Commission’s TDMA HAC exemption and, thus, mitigating any potential adverse impact on HAC users in its market.

III. CONCLUSION

For the foregoing reasons, strict enforcement of Section 20.18(c)(2) against Litchfield for would be unduly burdensome and inequitable, and grant of the instant waiver request is consistent with the public interest, convenience, and necessity.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: /s/ William J. Sill
William J. Sill
Nguyen T. Vu
2300 N Street, NW Suite 700
Washington, DC 20037

Its Attorneys

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¹¹ 2005 Order on Reconsideration ¶ 49.